

Federal Maritime Commission

§ 540.91

of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act (46 U.S.C. 44103(b)), then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act (46 U.S.C. 44105) without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for Service of

process for the purposes of the Rules of the Federal Maritime Commission, subpart B of part 540 of title 46, Code of Federal Regulations, issued under section 2 of the Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

(Place and Date of Execution)

(Name and Guarantor)

(Address of Guarantor)

By

(Name and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

[49 FR 36313, Sept. 14, 1984, as amended at 74 FR 50732, Oct. 1, 2009]

Subpart C—General

§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
540.4 (Form FMC-131)	3072-0012
540.5	3072-0011
540.6	3072-0011
540.8	3072-0011
540.9	3072-0011
540.23 (Form FMC-131)	3072-0012
540.24	3072-0011
540.26	3072-0011
540.27	3072-0011

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

Sec.

545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

545.3 Interpretation of §515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) 8(c) of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 40502) authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the Act. Section 10(b)(10) of the Act (46 U.S.C. 41104(10)) prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the Act (46 U.S.C. 40307(a)(3)) exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988. Redesignated and amended at 64 FR 7813, Feb. 17, 1999; 64 FR 9922, Mar. 1, 1999; 74 FR 50732, Oct. 1, 2009]

§ 545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

Section 10(a)(1) of the Shipping Act of 1984 (46 U.S.C. 41102(a)) states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any “unjust or unfair device or means.” An essential element of the offense is use of an “unjust or unfair device or means.” In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an “unjust or unfair device or means” from the failure of a shipper to pay ocean freight. An “unjust or unfair device or means” could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

[58 FR 7194, Feb. 5, 1993. Redesignated at 64 FR 7813, Feb. 17, 1999, as amended at 74 FR 50732, Oct. 1, 2009]

§ 545.3 Interpretation of §515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.

A claimant seeking to settle a claim in accordance with §515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

[65 FR 33480, May 24, 2000]